

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
WACO DIVISION**

**VERNA IP HOLDINGS, LLC,**

Plaintiff,

v.

**ALERT MEDIA, INC.,**

Defendant.

C.A. No. 6:23-cv-00373-ADA

**JURY TRIAL DEMANDED**

**DEFENDANT ALERT MEDIA, INC.’S RULE 12(b)(5) MOTION TO DISMISS  
FOR INSUFFICIENT SERVICE**

Alert Media, Inc. (“Alert Media”) hereby moves the Court to dismiss this case for invalid service of process under Rule 12(b)(5). FED. R. CIV. P. 12(b)(5).

When a Plaintiff fails to comply with Rule 4, a defendant may seek to dismiss the plaintiff’s claims under Rules 12(b)(4) and Rule 12(b)(5). *See generally* FED. R. CIV. P. 12. Rule 12(b)(5) enables the defendant to attack the manner in which service was attempted. FED. R. CIV. P. 12(b)(5). “[T]o achieve proper service for purposes of Rule 12(b)(5), a party must follow the requirements of Rule 4 of the Federal Rules of Civil Procedure.” *Washington v. VIA Metro. Transit*, No. SA18CA316FBHJB, 2018 WL 11355135 (W.D. Tex. Nov. 1, 2018), *report and recommendation adopted*, No. CV SA-18-CA-316-FB, 2018 WL 11355102 (W.D. Tex. Dec. 7, 2018) (quoting *Rhodes v. J.P. Sauer & Sohn, Inc.*, 98 F. Supp. 2d 746, 748–49 (W.D. La. 2000)).

The factual background leading to this Motion is explained in detail in Alert Media’s previous motion to dismiss. (*See* Dkt. 7.) Plaintiff filed a Complaint on May 16, 2023 and failed to attempt service before the 90 day deadline on August 14, 2023. (Dkt. 7 at 1.) Plaintiff never responded to that motion, and it is consequently unopposed. (Dkt. 10 at 2.) Following Alert

Media's previous motion to dismiss, Plaintiff attempted to formally serve Alert Media (September 22, 2023) and serve counsel for Alert Media (September 12, 2023). Both of these attempts were well beyond the 90-day service deadline of Rule 4(m), and Plaintiff never received permission from this Court to extend the time for service. Consequently, Plaintiff's service attempts are insufficient, and this Court should dismiss the Complaint under Rule 12(b)(5).

Dated: October 13, 2023

Respectfully submitted,

FISH & RICHARDSON P.C.

By: /s/ Neil J. McNabnay

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**ATTORNEYS FOR DEFENDANT  
ALERT MEDIA, INC.**

**CERTIFICATE OF SERVICE**

The undersigned certifies that a true and correct copy of the above and foregoing document has been served on October 13, 2023, to all counsel of record who are deemed to have consented to electronic service via the Court's CM/ECF system.

/s/ Neil J. McNabney  
Neil J. McNabney